

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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CHARLIE JONES,

Petitioner,

v.

Case No. 07-12958

CAROL HOWES,

Respondent.

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**OPINION AND ORDER DECLINING TO ISSUE A CERTIFICATE OF  
APPEALABILITY AND GRANTING PETITIONER'S APPLICATION TO PROCEED  
WITHOUT  
PAYMENT OF FEES ON APPEAL**

On January 28, 2010, pursuant to the court's order adopting the magistrate judge's report and recommendation and denying the petition for writ of habeas corpus, the court issued a final judgment in favor of Respondent Carol Howes. On February 19, 2010, Petitioner Charlie Jones filed a notice of appeal, an application to proceed in forma pauperis, and a motion for a certificate of appealability. For the reasons below, the court will deny a certificate of appealability and grant the application to proceed in forma pauperis on appeal.

The court declined to issue a certificate of appealability in its opinion and order adopting the magistrate judge's report and recommendation. The court finds no reason to reconsider that decision. A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. See *Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Petitioner has not

met his burden of showing a palpable defect by which the court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Eastern District of Michigan Local Rule 7.1(g)(3). Accordingly, the court will deny Petitioner's motion for a certificate of appealability.

The standard for granting an application for leave to proceed in forma pauperis is a lower standard than the standard for certificates of appealability. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed in forma pauperis if it finds that an appeal is being taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a); *Foster*, 208 F. Supp. 2d at 764-65. "Good faith" requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Although the court declined to issue a certificate of appealability, the court finds that Petitioner's claims are not frivolous. The court will therefore grant Petitioner's application to proceed on appeal in forma pauperis. Accordingly,

For the reasons stated above, IT IS ORDERED that Petitioner's "Motion for a Certificate of Appealability" [Dkt. # 35] is DENIED.

IT IS FURTHER ORDERED that Petitioner's "Application to Proceed In Forma Pauperis on Appeal" [Dkt. # 34] is GRANTED.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: April 6, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 6, 2010, by electronic and/or ordinary mail.

S/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522